

§ 23.402 General provisions.

(a) *Policies and procedures to ensure compliance and prevent evasion.* (1) Swap dealers and major swap participants shall have written policies and procedures reasonably designed to:

(i) Ensure compliance with the requirements of this subpart; and

(ii) Prevent a swap dealer or major swap participant from evading or participating in or facilitating an evasion of any provision of the Act or any regulation promulgated thereunder.

(2) Swap dealers and major swap participants shall implement and monitor compliance with such policies and procedures as part of their supervision and risk management requirements specified in subpart J of this part.

(b) *Know your counterparty.* Each swap dealer shall implement policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known to the swap dealer prior to the execution of the transaction that are necessary for conducting business with such counterparty. For purposes of this section, the essential facts concerning a counterparty are:

(1) Facts required to comply with applicable laws, regulations and rules;

(2) Facts required to implement the swap dealer's credit and operational risk management policies in connection with transactions entered into with such counterparty; and

(3) Information regarding the authority of any person acting for such counterparty.

(c) *True name and owner.* Each swap dealer or major swap participant shall obtain and retain a record which shall show the true name and address of each counterparty whose identity is known to the swap dealer or major swap participant prior to the execution of the transaction, the principal occupation or business of such counterparty as well as the name and address of any other person guaranteeing the performance of such counterparty and any person exercising any control with respect to the positions of such counterparty.

(d) *Reasonable reliance on representations.* A swap dealer or major swap participant may rely on the written representations of a counterparty to sat-

isfy its due diligence requirements under this subpart, unless it has information that would cause a reasonable person to question the accuracy of the representation. If agreed to by the counterparties, such representations may be contained in counterparty relationship documentation and may satisfy the relevant requirements of this subpart for subsequent swaps offered to or entered into with a counterparty, provided however, that such counterparty undertakes to timely update any material changes to the representations.

(e) *Manner of disclosure.* A swap dealer or major swap participant may provide the information required by this subpart by any reliable means agreed to in writing by the counterparty; provided however, for transactions initiated on a designated contract market or swap execution facility, written agreement by the counterparty regarding the reliable means of disclosure is not required.

(f) *Disclosures in a standard format.* If agreed to by a counterparty, the disclosure of material information that is applicable to multiple swaps between a swap dealer or major swap participant and a counterparty may be made in counterparty relationship documentation or other written agreement between the counterparties.

(g) *Record retention.* Swap dealers and major swap participants shall create a record of their compliance with the requirements of this subpart and shall retain records in accordance with subpart F of this part and §1.31 of this chapter and make them available to applicable prudential regulators upon request.

§§ 23.403–23.409 [Reserved]

§ 23.410 Prohibition on fraud, manipulation, and other abusive practices.

(a) It shall be unlawful for a swap dealer or major swap participant—

(1) To employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;